

# Cameroon's Fight Against COVID-19: An Ordinary Legal Framework for an Extraordinary Situation

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## The Nature of the Measures Adopted

Cameroon is part of the long list of countries grappling with the COVID-19 pandemic, which has created a state of health emergency in the country. A panoply of measures which restrict freedoms have been taken in the wake of this state of emergency, which has once more brought up the age-old debate of the protection of human rights and public liberties in the context of emergency. All the measures adopted by the Cameroonian Government to counter COVID-19 exclude the use of emergency law, and are instead part of the existing ordinary law.

In Cameroon, emergency law is solely the prerogative of the President of the Republic. He alone can declare a state of emergency “when circumstances so warrant” or a state of siege “in the event of a serious threat to the nation’s territorial integrity or to its existence, its independence or institutions” (Article 9 of the [Constitution](#)). So far, Cameroon’s government has not declared a state of emergency.

Apart from these exceptional powers of the President of the Republic prescribed in the constitution, there is no emergency legal framework applicable in the event of a health emergency (except, to a lesser extent Law No. 86/016 of 16 December 1986 on the General Reorganization of Civil Protection which can governs urgent health situations, since it applies to disasters and calamities, as well as their consequences). This vacuum may be justified by the totally new nature of the health threat. Cameroon could, [as has been done in many countries](#), fill this vacuum by adopting a legal framework tailored to the situation and which could possibly be used to manage future situations. It has not, however, as of yet.

Instead, Cameroon has chosen to base the fight against COVID-19 on its existing legal framework. The fight against COVID-19 is a public health issue which, according to Cameroonian law, is a component of public order. The protection of public order is the responsibility of executive authorities, which have the power to adopt any executive orders for its preservation. As of now, all the measures taken in the context of the fight against COVID-19 are administrative measures, but as we shall see, they have different legal qualities and force.

From the point of view of their legal force, the measures adopted in the fight against COVID-19 can be classified into two categories namely, legally binding and non-legally binding measures.

## Legally Binding Measures

Legally binding measures are those contained in legal instruments, in this case administrative decisions, be it a decree or an order and whether they are taken by central or local authorities. These measures include:

- (a) the obligation to wear of face masks in [the city of Bertoua issued by the Mayor](#);
- (b) the [prohibition by an order of April 2, 2020 “of the consumption of alcoholic, hygienic and traditional drinks on the spot”, by the Governor of the Littoral region](#);
- (c) the [prohibition by the Senior Divisional Officer \(SDO\) of the Menoua Division](#), of any entry of corpses of people who died out of his jurisdiction, whatever the cause of their death, and the obligation to bury at their place of death people who died within the division; and
- d) [the prohibition of any donation and distribution of equipment to fight COVID-19 without prior authorization](#) from the administrative authority in the Lekie division.

These measures are based on legislative provisions which make these administrative authorities the guarantors of public order in their respective jurisdictions (see article 218(1)(d) of the [General Code of Local and Regional Authorities](#), 2019 for the Mayor, articles 4(1) and 36(1) of the [decree no. 2008/337 of November 12, 2008 defining the responsibilities of heads of administrative units and the organisation and the functioning of their services](#), respectively for the Governor and the SDO).

Binding measures also include the commutation and remission of prison sentences by a [presidential decree of April 15, 2020](#) based on article 8 (7) of the Constitution. However, it is worth noting that this presidential decree suffers from a formal defect. According to Article 8 (7), the President of the Republic exercises the right of clemency “after consultation with the Higher Judicial Council” (HJC). The constitution thus makes the consultation of the HJC compulsory and not optional. The opinion of the HJC prior to the exercise of the right of pardon – although not binding itself – is an important formality to symbolically preserve the separation of powers.

In this case, however, the presidential decree implementing the right of pardon was taken without the opinion of the HJC since no session of the latter was held before its adoption. If this decree is, unchallengeable on the substance (since it falls within the category of acts of State, that is to say, acts that are not subject to any legal action), it is nevertheless attackable in the form as it violates a relevant provision of the Constitution.

## Non-Legally Binding Measures

Non-Legally binding measures are those contained in documents other than legal instruments. Such is the case of the following:

- (a) *Measures instructed by the President of the Republic and made public by the Prime Minister in the [Government Response Strategy to the Coronavirus Pandemic](#).*

Among these measures were the closure of borders; the closure of schools and universities; the ban on gatherings of more than 50 people; the closure of drinking spots, restaurants and other places of leisure as from 6 p.m. (this restriction was lifted on 30 April 2020); the restriction of urban and interurban movements; the requisition of private health facilities, hotels and vehicles necessary for the implementation of the State response plan and the compulsory and systematic wearing of a face mask in all public places. The legal basis for these measures normally poses no problem since they fall within the framework of the regulatory power (or statutory authority, defined as the power given to some executive authorities to issue regulations, that is, enforceable acts, of general character) which the Constitution confers on the President of the Republic and the Prime Minister (Articles 8 (8) and 12 (3)). However, given their gravity and their impact on individual freedoms, some of these measures (such as the closure of all schools and universities, the ban on gathering of more than 50 people, the restriction of urban and interurban movements) seem excessive to be based on the common law of maintenance of public order which contains provisions governing the ordinary life of citizens. Due to their exceptional nature they should have been based on exceptional measures. The same can be said about the suspension of courts and tribunals for a period of one month envisaged by the Minister of Justice before being abandoned by the Prime Minister, taking into account its consequences.

*(b) The measure taken by the Minister of Transport consisting of the compulsory and systematic wearing of a face masks [in all means of public transport](#).*

The legal basis for this power is difficult to find insofar as, unlike the PR and the PM, who enjoy a general regulatory power attributed to them by the Constitution, ministers can only exercise police power if a specific text gives them the power to do so. As of today, no text gives such power to the Minister of Transport. This measure could have been taken by the Minister of Health as part of his power to “ensure the development of actions to prevent and fight epidemics and pandemics” (see article 8(32) of the [decree No. 2011/408 of 9 December 2011 to organize the Government](#)). This measure taken by the Minister of Transport thus suffers from a legal defect which renders it null and void.

*(c) The measure taken by the Minister of Territorial Administration (MINAT) consisting of the declaration of illegality of the [Cameroon Survival Fund Initiative](#)*

This fundraiser was launched by the opposition political party Cameroon Renaissance Party (CRM) and MINAT ordered to close the accounts opened for the occasion, all of which are contained in a [press release dedicated to the issue on April 7, 2020](#). This approach was taken within the framework of “monitoring the activities of associations and political movements” carried out by MINAT (see article 8(5)(a) of the above decree No. 2011/408).

## The Appropriateness and Proportionality of the Measures Adopted

Are these measures proportional to the threat? This question is all the more important as the restrictions affect the freedoms of trade, movement, establishment, association, religion, the right to education, to work, etc. all protected by the Constitution. [National public opinion has been divided between the proponents of a stronger restriction of freedoms and those of their alleviation](#), especially for economic reasons (the disruption of economic activities, high cost of masks, etc.).

However, the appropriateness and proportionality of some measures have been highly criticized. This is the case of the prohibition of the introduction of any corpses or their moving within the Menoua Division, regardless of the causes of death. If this measure was taken to prevent the introduction of corpses of persons who died from COVID-19, its general and abstract character was not justified since it also targeted the corpses of persons deceased from causes other than COVID-19. It was following harsh criticism that the SDO [modified it by limiting its scope to corpses of people who died from COVID-19 and by conditioning the moving of corpses within the division to the production of a medical certificate indicating the nature of death](#) (Order No. 388 of May 4, 2020).

The appropriateness of adopting these measures must be assessed on a case-by-case basis. If public order has often been the pretext for unjustified restrictions of liberties in Cameroon, in this case, the danger that the pandemic poses amply justifies the severity of the measures decreed. By doing a comparative study in assessing the proportionality of the measures taken in the context of the fight against COVID-19 in Cameroon, one would conclude that they are instead insufficient given the magnitude of the threat. Indeed, as of today, no total lockdown has been prescribed contrary to what has been observed in many European and even African countries. Instead, many countries are following Cameroon's decision to make the wearing of facemask compulsory and systematic.

## Enforcement of Measures Adopted

The issue of enforceability particularly arises in relation to non-legally binding measures since it questions the basis for their imposition on citizens. As a rule, since these measures are not contained in binding legal instruments, they have no legal effect and can therefore not be binding. They are mere announcements and can therefore not be relied upon to impose duties on citizens. One would have expected that as in other countries, the announcement made by these authorities would be followed by appropriate legal instruments. This has not been the case and it is difficult to find a reason for this choice since nothing prevented the authorities from doing so.

However, it is interesting to note that in practice, these measures have received the most stringent application, with the involvement of administrative authorities and law enforcement forces. This is particularly the case for primo-ministerial

measures, the violation of which is sanctioned by the sealing of recalcitrant shops, the impoundment of cars not respecting the passenger-limit, the payment of fines, police custody (notably for the compulsory wearing of masks) and the [use of force to disperse people not respecting the ban of gathering of more than 50 people](#). The absence of legal bases for these measures violates the principles of “*nullum crimen sine lege*” (no crime without law), and “*nulla poena sine lege*” (no punishment without law). As for the measures of the Ministry of Territorial Administration, they led to the suspension of accounts opened with mobile operators (MTN and Orange). All this is done with no legal basis.

On the other hand, the introduction of measures at both national and local levels could create an issue in determining the ultimately applicable law, particularly in areas where national and local measures differ. This is, for example, the dilemma faced in the Littoral region; is the Governor justified in deciding on a more restrictive measure than that decreed by a higher authority in the person of the Prime Minister?

In a unitary state like Cameroon, the *lex superior* rule gives Prime Ministerial measures precedence over any other law, and in particular a Governor’s order. However, this rule does not preclude the adoption of adjusted texts which are more context-specific, that is to say texts containing lighter or more stringent measures where local conditions so require.

## Judicial Review

Cameroon has a judicial system with four separate judicial orders, namely judicial (ordinary), administrative, constitutional and audit orders. The litigation of administrative action is jointly handled by administrative and judicial judges. All decisions taken within the framework of the fight against COVID-19 fall under the jurisdiction of [administrative courts](#) and they are competent to annul contested measures or to rule on compensation for damages caused. However, the legal non-existence of some measures enacted, as mentioned above, makes their legal challenge difficult, if not impossible. Indeed, in Cameroonian administrative litigation, judicial review is conditioned by the attachment of the contested decision, on pain of inadmissibility of the petition. The question here is: how to petition for review of a document that does not exist? This situation will invariably lead to a more than uncomfortable situation for potential litigants who are unable to bring to justice non-existent acts which are nevertheless being applied. The judge should soften his position on this issue and take into account any documentation of the concrete measure like for instance a proof of the payment of a fine.

The [judicial courts](#), on their part, which review administrative action only exceptionally, may be led, as the case may be, to look into the enforcement of the measures. They can thus be seized for all cases of misapplication or abuse of the police forces involved in the application of government measures, with the main objective of compensating victims.

However, it should be noted that several factors contribute to making the control of administrative action ineffective which *inter alia* consist of: (a) the reluctant

nature of litigants to bring the state to justice, mainly due to the common perception of the state considered as an invincible monster with all rights over individuals; (b) the slowness of administrative justice which is likely to discourage potential litigants, since decisions are generally rendered after several years of trial; and (c) the attitude of the Cameroonian judge who, through case law, has proven to be more a “protector of the prerogative of the Administration” than a guarantor of liberties. The administrative judge for instance, has consistently refused to control the appropriateness and proportionality of administrative decisions, limiting his domain and sphere of review.

## Conclusion

Four essential things deserve to be retained from this post. First, in its fight against COVID-19, Cameroon has neither resorted to the exceptional measures that its constitution provides for, nor adopted a new law for the occasion, as many other countries have done. The state has instead relied on already existing provisions, applicable in ordinary times to combat the pandemic. This speaks volumes about the “ordinary” powers of the administrative authorities. Secondly, formal and substantial defects are found in some of the measures adopted, which deprive them of any legality and should therefore have prevented their application. Thirdly, the impact the measures adopted have had on the rule of law and freedoms are located halfway between the laxity criticized by some and the police state announced by others. Fourthly, the organization and functioning of administrative litigation in Cameroon augurs well for incomplete and ineffective judicial control of state action in the context of the fight against this pandemic.

In view of the above, it can be concluded that if the content of the measures are justified by the seriousness of the threat, the excesses and shortcomings noted are to be deplored. Nevertheless, it should be remembered that they are not specific to this period of fight against COVID-19. It should be noted that COVID-19 does not threaten the rule of law in Cameroon since it is almost permanently threatened. It is only a pretext for the perpetuation of the common practices in Cameroon.

